

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Nancy S. Robinson, Preston Kerry)	
Robinson, and Damien Robinson,)	
)	
Plaintiffs,)	C/A No. 2:05-1887
)	
vs.)	
)	ORDER and OPINION
Medical University of South Carolina, and)	
the physicians whose true names are)	
unknown,)	
)	
Defendants.)	
)	

This medical malpractice action is before the court on defendants' motion to dismiss. It is hereby **ORDERED** that defendants' motion to dismiss plaintiffs' Emergency Medical Treatment and Active Labor Act ("EMTALA") claim, 42 U.S.C. § 1935dd, is **GRANTED**.¹ It is further **ORDERED** that the remainder of defendants' motion to dismiss is **DENIED**.

¹ EMTALA generally requires hospital emergency rooms to provide appropriate screening to all individuals who seek medical assistance, and provides guidelines for when a patient may be transferred. EMTALA includes a strict two year statute of limitations: "no action may be brought under this paragraph more than two years after the date of the violation with respect to which the action is brought." 42 U.S.C. § 1395dd(2)(c). Defendants contend plaintiffs' filing is untimely because the suit was filed over three years after the incident giving rise to the claim. Plaintiffs contend the discovery rule applies, and therefore the statute of limitations runs from the time the condition was diagnosed. Two federal courts have expressly held that the discovery rule does not apply to EMTALA actions. See Dickey v. Baptist Mem'l Hosp., No. 03-98-161, 1996 WL 408879, at *2 (N.D. Miss. June 27, 1996) (rejecting plaintiff's application of discovery rule to EMTALA claim, and concluding EMTALA's statute of limitations "expressly precludes the filing of an action more than two years after the actual date of the alleged violation"); Saltares v. Hosp. San Pablo Inc., 370 F. Supp. 2d 28, 33 (D. Puerto Rico 2005) (concluding "the diligence-discovery rule does not apply to EMTALA claims").

AND IT IS SO ORDERED.



**DAVID C. NORTON
UNITED STATES DISTRICT JUDGE**

**December 19, 2005
Charleston, South Carolina**